



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/17846/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 17th August 2020

Decision & Reasons Promulgated
On 26th August 2020

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**GEORGE [N]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt, instructed by Turpin & Miller LLP (Oxford)

For the Respondent: Ms A Everett, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the Appellant's bundles of 31 and 36 pages and the Respondent's unpaginated bundle, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a citizen of Cameroon born on 25 November 1987. He appeals against the decision of First-tier Tribunal Judge Thomas dismissing his appeal against the refusal of leave to remain on human rights grounds.
2. The Appellant came to the UK as a visitor in 2002 and has remained here since then. In 2010 he was detained under the Mental Health Act and later released. His subsequent applications for leave to remain on human rights grounds made in October and November 2011, April 2016, and January and November 2018 were refused.
3. On 9 January 2016 the Appellant was arrested on suspicion of sexual touching and threats to kill. On 10 May 2019 he was sentenced to a twelve month conditional discharge and restraining order for the offence of harassment. Additionally, he was sentenced to a 24 month community psychiatric order and placed on the sex offenders' register for five years for the offence of sexual assault.
4. The Appellant's application for leave to remain was refused under paragraphs S-LTR.1.6, which states that the presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations or other reasons make it undesirable to allow them to remain in the United Kingdom. The Appellant could not satisfy the requirements of 276ADE, in particular there were no very significant obstacles to integration in Cameroon. The Appellant was 31 years of age and had lived in the UK for sixteen years. The Respondent found there were no exceptional circumstances and the refusal of leave did not breach Article 8.
5. The First-tier Tribunal Judge found at [20]:

"In respect of private life under the Rules, the Appellant claims the refusal on suitability grounds under the Immigration Rules is not made out because his offending was committed during a period of mental illness and does not represent an ongoing level of threat. I note as part of his punishment the Appellant is entered on the sex offenders register for a period of 5 years, which in my view does indicate he is a continuing threat to society. For these reasons the refusal on suitability grounds is substantiated."
6. In the alternative, assuming the Appellant met the suitability requirements, the judge then considered the other requirements of paragraph 276ADE. She applied SSHD v Kamara [2016] EWCA Civ 813 in her assessment of whether there were very significant obstacles to integration. She stated at [21]

"... the idea of 'integration' called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was carried on and the capacity to participate in it, so as to have a reasonable opportunity to be

accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life."

7. The judge made the following relevant findings:

"22. In this appeal, it is argued the Appellant is subject to relapse whether or not he complies with medication and he has done so in the past in the UK. The medical evidence indeed does support this argument, and I accept it. The issue therefore is whether any relapse the Appellant may suffer in Cameroon and the circumstances he finds himself in amounts to very significant obstacles to his integration in Cameroon. I find for the following reasons, it does not."

"23. The Appellant has been diagnosed with bipolar disorder, which is controlled by medication, at present aripiprazole to which he is responding well. The background information and expert evidence identifies a level of mental health care and treatment available in Cameroon albeit most likely at a cost and not of the same quality as that available in the UK. There is no evidence that as a national, this Appellant could not access any such available treatment in Cameroon. The Appellant has his parents in Cameroon and has financial support from his relatives here in the UK. There is no evidence their support could not continue to enable him to access private medication and medical care if necessary, in Cameroon. The Appellant essentially lives independently in the UK. He cooks, cleans and performs all daily routine tasks for himself. He sees a key worker weekly, primarily for advice. There is no evidence this aspect of his care is vital to his survival. Whilst I accept the level of mental health treatment in Cameroon is not likely to be comparable to that in the UK, there is nonetheless treatment available and no evidence the Appellant would not respond positively to any such treatment. I note the medical evidence, the Appellant has not responded well to some medications in the past but this evidence by no means confirms there is no effective alternative treatment available for the Appellant in Cameroon. As to the risk of relapse, it is apparent from the evidence, the Appellant is likely to face relapse even if he remained in the UK. Significantly, there is treatment available in Cameroon in the event of a relapse there and to ensure continuity of the Appellant's mental stability."

"24. The claim the Appellant's father will insist on following traditional methods of treatment for this Appellant is not consistent with his past actions in bringing the Appellant to the UK, clearly for a better life. It is apparent from those actions the Appellant's father wanted the best for the Appellant. It does not follow the Appellant faces the same fate as his uncle, if he returns to Cameroon. The Appellant's father worked to support his family in the past and continues to do so. He maintains an

interest in the Appellant. Relatives in the UK assist the Appellant financially and can continue to do so, whether he remains in the UK or returns to Cameroon. There is no evidence the Appellant's parents and sister could not provide accommodation, emotional and physical support for him and I believe they would. The Appellant remains familiar with social and cultural aspects of life in Cameroon, and despite his mental health condition, I find with the assistance of his family and the treatment that is available in Cameroon, he would have the capacity to participate in society and to operate daily and develop a private life of substance there. On balance, I find there are no very significant obstacles to integration in Cameroon for this particular Appellant, and the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules are not met."

8. The judge then went on to consider Article 8 outside the Immigration Rules and concluded at [32]:

"On the totality of the evidence and balancing all relevant factors, I find the countervailing feature of the Appellant's mental health condition, does not amount to exceptional circumstances, and does not outweigh the public interest in his removal. For these reasons, the Respondent's decision in this case is proportionate and does not breach Article 8."

9. Permission was sought on two grounds. Firstly, the judge had, by relying solely upon notification requirements under the Sexual Offences Act 2003, unlawfully fettered her discretion on the question of suitability and she failed to give adequate reasons for her findings thereon. Secondly, the judge failed to consider relevant evidence on the question of integration. The judge failed to consider the typical behaviours expressed by the Appellant during periods of mental illness and the likely reaction of Cameroonian society to the Appellant's behaviour evidenced in the psychiatric report and the expert country report. Permission was granted by First-tier Tribunal Judge O'Garro on both grounds.

Submissions

Ground 1: suitability

10. Mr Holt submitted the judge's finding on suitability could be found at [20] of the decision and the only factor referred to by the judge was that the Appellant was listed on the sex offenders' register. Mr Holt submitted that this was not determinative of the level of threat as it was not an assessment of the level of risk.
11. I asked Mr Holt why a continuing threat to society was a relevant consideration under paragraph S-LTR 1.6? Mr Holt submitted that the question of whether a previous conviction of sexual assault rendered the Appellant's presence against the public interest was best analysed in relation to the risk the Appellant poses. If the

court did not look at the level of risk then the only other value for such a suitability requirement would be a punitive measure. The concept of deterrent effect played no part because of the nature of the Appellant's state of mind. In assessing whether it was conducive to the public good the question that should be asked is, 'Does the Appellant pose a risk to the public?' Other than a risk to the public there is no other reason why the Appellant's presence in the UK would not be conducive to public good. The approach to suitability was flawed because the judge focussed on the Appellant's presence on the sexual offenders' register.

Ground 2: integration

12. The medical evidence showed that there was a strong genetic basis for the Appellant's mental illness and therefore the issue before the judge was whether the Appellant was likely to relapse and the reaction of the Cameroonian community in the event of a relapse. These factors were relevant to the test of whether he was an insider capable of participating in society in Cameroon so as to have a reasonable opportunity to be accepted there and to be able to operate on a day-to-day basis in that society and build relationships. Therefore, how the Cameroonian community would react was a crucial element of this assessment which the judge failed to address.
13. The judge found that the Appellant will relapse in the future even if he continues to take medication and the judge failed to take into account how that relapse would manifest itself. This was set out at paragraph 74 of the psychiatric report of Dr Cornish dated 21 January 2020, which states:

"We spoke about the support available, in particular Mr [N]'s parents. He reported that if he were compelled to return to Cameroon then he would have to live with them. Although they are aware of his history of mental health problems, he reported that they have little understanding of psychiatric illness and believe that his mental health problems arise as he is cursed or because of witchcraft. Again, I cannot confirm this although I would share concerns about how effective interventions would be if he were to become mentally unwell in Cameroon. I note that in the UK police intervention, mental health law and the use of quiet containing environments such as psychiatric intensive care units have been required. His behaviour when unwell such as disinhibition, grandiosity, aggression and hostility may well lead to him being subject to ill-treatment in Cameroon."

14. Mr Holt submitted that the judge also failed to consider how the Appellant would be treated by the community in Cameroon and he referred me to page 35 of the Appellant's supplementary bundle, the country expert report from John Birchall dated 11 February 2020. In particular, he relied on the following paragraph:

"I have witnessed ridicule, constant harassment and even violence against someone behaving in ways which in the United Kingdom would be seen as in

need of immediate specialist help. Those treating people in such ways are simply applying their beliefs, juju, which accepts that people behaving as Mr [N] might be possessed of spirits and they are feared. Someone behaving as Mr [N] can behave and has done when ill are thought to be possessed and are treated as mad and not wanted in public places.”

15. Mr Holt submitted that people behaving as the Appellant would on return in the event of a relapse might be perceived as possessed of spirits. The First-tier Tribunal Judge had only considered whether the Appellant was at risk of relapse and the availability of treatment was not causative. At [23] the judge failed to consider the Appellant’s behaviour in the event of a relapse and reference to the comparative risk of relapse played no part in any such assessment. In the UK the Appellant would be hospitalised whereas in Cameroon he would be ejected from society at the very least. The Appellant would be subject to ill-treatment and it was irrelevant that a relapse was as likely to occur in the UK. At [24] the judge failed to deal with how Cameroon society would treat the Appellant. The judge only looked at what the Appellant’s father would do. The judge did not assess the likely reaction of Cameroon society and this was a fundamental part of the Appellant’s case. The assessment of very significant obstacles to integration was unlawful and the judge failed to give lawful reasons for rejecting the Appellant’s claim.
16. Ms Everett submitted that there was no material error of law. The suitability assessment was carried out on the basis that the Appellant’s presence in the UK was not conducive to the public good. It was not limited to whether the Appellant posed a risk of harm. There was no suggestion that the Appellant’s presence on the sex offenders’ register was sufficient to satisfy paragraph S-LTR.1.6. There was no dispute as to why the Appellant was on the sex offences’ register and the facts of his criminal offence were known. The Respondent’s conclusion that the Appellant did not satisfy the suitability requirements and the reasons for this were not disputed and the judge accepted the Respondent’s position. The presence on the sex offenders register was relevant because it was a requirement imposed for the safety of others. The judge’s reasons for finding the Appellant did not satisfy the suitability requirements were adequate.
17. In any event, if the judge was wrong on suitability, she went on to consider very significant obstacles to integration This was a high threshold and the judge had considered all relevant factors at [22] to [24]. The submission that the judge had failed to consider how the Appellant’s condition manifested itself and how Cameroonian society would react to his behaviour was not made out. The judge was aware of the Appellant’s behaviour and found that the Appellant’s father would be able to help and support him. The judge looked at the support available to the Appellant should he return. On the evidence before the judge he would not be subjected to traditional medicine and, given that there was medical treatment available, the Appellant had family to enable him to access it. There were no very significant obstacles to integration and no error of law in the judge’s decision.

18. In response, Mr Holt submitted that the only conduct relevant to suitability was a sexual offence. The Appellant received a 24 month community psychiatric order and therefore his offending was limited to his psychiatric presentation. Without more this was not conduct or character that was usually relied on in paragraph S-LTR.1.6. The offending behaviour was the direct product of the Appellant's illness and that was not sufficient to exclude somebody from the UK. The Appellant was given treatment and not imprisoned. Even if the sex offenders' register showed the Appellant was a threat, this was not sufficient to conclude that the suitability requirements were not met. The judge's conclusions were unlawful and without basis for why his presence was not conducive to the public good. The judge had given insufficient reasons for finding the Appellant's presence in the UK was not conducive to the public good.
19. In relation to integration, Mr Holt submitted that the judge had looked at support from the Appellant's father and availability of treatment. She had not said that they were protective factors which meant that the Appellant would not be subject to ill-treatment. This finding was missing, but even if it was present, the judge had failed to refer to the greater societal risk and therefore her conclusion that there were no very significant obstacles to integration was unlawful. The Appellant would be shunned in a way that he could not participate in society and therefore the refusal of leave engaged the Appellant's Article 8 rights. I asked if there was any challenge to the judge's finding in relation to Article 8 outside the Immigration Rules and Mr Holt indicated there was not.

Conclusions and Reasons

20. The judge considered the Appellant's submission that the offence was committed during a period of mental illness and therefore he was not an ongoing threat but concluded that, notwithstanding the community psychiatric treatment order, the Appellant was still placed on the sexual offences' register for a period of five years and this was sufficient to support the finding that the Appellant's presence in the UK was not conducive to the public good. The Appellant did not dispute his actions which led to that criminal conviction or the fact that he was placed on the sexual offenders' register. On the facts, it was open to the judge to find that the suitability requirements were not met.
21. In any event, any error in relation to suitability was not material because the judge went on to consider very significant obstacles to integration. It is quite clear from [21] that the judge properly directed herself on the test for very significant obstacles to integration as set out in Kamara. The judge applied that test at [22] to [24]. The judge's finding that the Appellant could access treatment in Cameroon for his bipolar disorder and that he would receive support from his father and relatives was not challenged in the grounds of appeal or in submissions before me. Mr Holt's challenge was based on the judge's failure to consider the Appellant's behaviour when he relapsed and how that behaviour would be treated by the Cameroon community.

22. I am satisfied from [9] that the judge took into account the consultant forensic psychiatric report of Dr Cornish and was aware of the Appellant's behaviour in the event of relapse. The judge specifically refers to the Appellant's behaviour as described in paragraph 74 at the end of [9], namely disinhibition, grandiosity, aggression and hostility. I am satisfied from [10] that the judge also took into account the country expert report of John Birchall and of the conditions present in Cameroon.
23. Accordingly, I am not persuaded by Mr Holt's submission that the judge failed to consider how the Appellant's relapse would manifest itself and that this would lead to ill-treatment on the basis that he would be considered to be possessed by spirits and mad. The judge found that the Appellant would not be subject to traditional beliefs and that there was no risk that his behaviour when unwell would attract adverse attention from the community because he would have the emotional and physical support from his parents and sister and the assistance of his family to access treatment.
24. I find that there was no error of law in the judge's assessment of very significant obstacles to integration. It is apparent that the judge identified protective factors at [24] which would allow the Appellant to operate on a day-to-day basis, participate in society and he would not be at risk of being shunned by the Cameroon community.
25. In any event, this is a human rights appeal and there was no challenge to the Article 8 assessment outside the Immigration Rules. The judge took into account all relevant evidence and in particular the Appellant's mental health condition and her conclusion that this did not amount to exceptional circumstances sufficient to outweigh the public interest was open to her on the evidence before her. On the facts, the refusal of leave to remain was proportionate. There was no material error of law in the judge's decision dated 8 April 2020. I dismiss the Appellant's appeal.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 21 August 2020

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 21 August 2020